REED SMITH SHAW & MCCLAY LLP

Formed in the Commonwealth of Pennsylvania

1301 K STREET, N.W.

SUITE 1100 - EAST TOWER

WASHINGTON, D.C. 20005-3317

202-414-9200

FAX 202-414-9299

GEORGE R. CLARK
202-414-9215
grclark@rssm.com

'00 FEB 22 P4:54
OFFICE OF ZONING
DISTRICT OF COLUMBIA

February 22, 2000

VIA HAND-DELIVERY

Sheila Cross-Reid, Chairperson
District of Columbia
The Board of Zoning Adjustment
441 4th Street
Room 210-South
Washington, DC 20001

Re: BZA Appeal No. 16533
4512 28th Street, N.W.
Square 2251, Lot 29
Additional hearing date February 23, 2000

Dear Ms. Reid:

Enclosed please find the original and nine copies of the timeline requested by the Board at the first day of hearing in this case. Also enclosed are 10 copies of the additional exhibits relied on by Appellants during the hearing of February 2, 2000, as well as others to be used at the resumed hearing on February 23, 2000.

I have also enclosed copies to be stamped in as received and returned. Thank you for your courtesies in this matter. Please feel free to contact me if you have any questions.

Sincerely yours,

George R. Clark

GRC/ydw

Enclosures

cc: John Patrick Brown, Esq.

BZA Case No. 16533 Exhibit No. 23

Board of Zoning Adjustment
District of Columbia
CASE NO.16533
EXHIBIT NO.23

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

IN RE: 4512 28th Street, N.W.	)	
Square 2251, Lot 29	)	BZA Appeal No. 16533
	)	
Appeal of	)	
	)	
George and Mary Clark	)	
Stuart Sloame and Ellen Seeherman	)	
James D. and Emily Baker	)	

'00 FEB 22 P4:54
OFFICE OF ZONING
DISTRICT OF COLUMBIA

TIMELINE OF APPELLANTS

George R. Clark, D.C. Bar #179747
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005
(202) 414-9215
(202) 414-9299
Attorney for Appellants

February 22, 2000

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

IN RE: 4512 28th Street, N.W. Square 2251, Lot 29	)	BZA Appeal No. 16533
Appeal of	)	
George and Mary Clark Stuart Sloame and Ellen Seeherman James D. and Emily Baker	)	

TIMELINE OF APPELLANTS

INTRODUCTION

This timeline is submitted in response to the request of the BZA at the first hearing date in this case on February 2, 2000.

Before April 1999. Forest Hills, LLC ("Forest Hills") acquires 4512 28th Street, N.W. ("4512") for approximately $372,000 from an estate. 4512 was a single-family home built in 1956, consisting of a finished basement with garage, a single primary living floor and an attic story. The pre-existing footprint of the house is shown on Exhibit 3 (p.1), in the cross hatched area.

April 23, 1999. Forest Hills files its original application for permit. The application states that the developer planned to "demolish existing SFD to foundation. (Bsmt to remain). Construct 3 floors and addition to exist.

footprint. New 1 story garage." Forest Hills admits now that the permit application contained an "error" that was "unintentional" by stating the new house would be only 3 stories. (Opp. Br. at 16-17 n. 5)[1]. Forest Hills admits that the architect "mistakenly failed to take into consideration that the existing lower-level of the house would count for purposes of the applicable three-story limitation." (Id. at 20). This was "simply a human error." (Id. at 20).

The developer had not met with any of the neighbors and had not notified any of the neighbors, or the ANC, of its plans to demolish the existing home and build a new one.

Late June or early July 1999. The Appellants notice that there is activity at the site, with large trees being removed. The developer still has not identified itself or met with any of the neighbors and has not notified any of them, or the ANC, of its plans to demolish the existing home and build a new one.

The first activity by the developer is taking down several trees 75 feet or more in height so that the expansion to the existing foundation, which was not revealed on the permit or its application, could be accomplished.

---

[1] "Opp. Br." refers to the Opposition Statement of Intervenor, Forest Hills, LLC, filed on January 27, 2000.

One evening between July 1 and July 12, 1999. The neighbors meet with Forest Hills, through Mr. Murray Cohen. Mr. Cohen showed the neighbors renderings of the proposed new house (Exhibit 5). He did not provide the neighbors with copies of any plans. The neighbors had to ask to make copies of the renderings, and also made a copy of the plat.

The neighbors commented that they thought the proposed house was too large for the lot and the neighborhood, and suggested that perhaps both sides could get together with a proposal for how to reduce the scale of the house.

At that meeting Mr. Cohen was asked whether he could build "as of right." Mr. Cohen explained that he was an experienced developer and knew for certain that he could build the proposed new house as of right. He claimed that it met all zoning ordinances, including those for height.

In their original prehearing statement, the Appellants placed this meeting as being in June 1999. Upon review of the prehearing statement of Forest Hills, it is certain that the meeting took place after July 1, 1999. There are three facts which point to this: (1) Forest Hills states that Mr. Sloame met with Mr. Cohen on July 1, 1999 (Opp. Br. at 5). The meeting of the neighbors and Mr. Cohen took place after that date; (2) The meeting did not take place until site preparation was underway, if not after the actual beginning of the removal of the roof. According to Forest Hills, site preparation began on July 1,

1999 and removal of the roof began on July 12, 1999 (Id.); and (3) another neighbor who planned on attending the meeting but could not do so at the last-minute, recalls that the meeting was not scheduled until at least site preparation had begun, because Mr. Cohen used that as the basis to offer the neighbor's son a demolition job.

July 1999. The Appellants investigate the zoning regulations, including regulations concerning building height. They determine that the existing basement constitutes a story because it is partly below grade and its ceiling is far more than four feet above the adjacent finished grade. In fact, the ceiling was six or more feet above the finished grade at the measuring point for height.

Approximately July 27, 1999. Mr. Clark visits Mr. Cohen on the site and tells him that the neighbors believe that the house is four stories in height and therefore violates the zoning regulations. Mr. Clark also suggests to Mr. Cohen that there may be ways to ameliorate the height problem. Mr. Cohen refuses to discuss the issues, claiming that there is no height problem. While Mr. Clark cannot identify the precise date of this conversation, Forest Hills places it as July 27, 1999 (Opp. Br. at 5).

Approximately July 27 or August 3 or 4, 1999[2]. The Appellants (through Stuart Sloame) visit DCRA and examine the application and first permit. Mr. Toye Bello takes a closer look at the plans and determines that the house as planned, which was still not being framed, is four stories in height. Mr. Bello tells Mr. Sloame that he was "misled" by the permit application which called for only three stories, and claimed to be built on the original footprint with the exception of the one-story addition. Mr. Bello tells Mr. Sloame he will call in the builder. A stop order on construction apparently was issued for a brief period of time. Forest Hills agrees that it was informed by its permit expediter on that date that a stop work order had been or would be issued (Opp. Br. at 5).

July 28, 1999. According to Mr. Bello, DCRA then suggests to the developer that if Forest Hills changes the grade so as to have fewer than four feet of the basement exposed, the basement would become a cellar, and would not count as a story for purposes of the height limitation. In fact, the revised permit explicitly states "change finished grade to convert

---

[2] Mr. Sloame's records indicate that he met with Mr. Bello on either August 3 or 4,1999, and he so testified at the first day of hearing. Forest Hills places this meeting, to which it was not a party, on July 27,1999.

basement to cellar as per Robert Chen." (Exhibit 16). Robert Chen is a DCRA employee.

August 11 1999. In response to a call from Mr. Sloame, Mr. Bello states that he spoke with Robert Shelton, the construction inspector for the area, who issued a stop order at Mr. Bello's request. Mr. Bello then says he met with the builder and lifted the stop order on the builder's promise to submit revised plans to back fill the front. Mr. Bello has suggested to the builder that it can convert the basement to a cellar by filling in some dirt in front of the basement. The builder is to file new plans, but has not yet done so. Although Mr. Bello promises to call Mr. Sloame when the new plans are filed, he never does so. In response to a question from Mr. Sloame, Mr. Bello states that if a permit is issued his decision can be appealed to Mr. Nunley, Chief of the Zoning Review Branch and then to the new Zoning Administrator, Michael Johnson.

August 1999. Emily Baker contacts the ANC and Councilmember Patterson's office about 4512. After August 16, Ms. Baker, Mr. Sloame, and Mr. Clark, all make virtually daily calls to different DCRA employees in an attempt to find out the status of the new permit application and whether it will be or has been approved.

August 13, 1999. Mr. Sloame writes a memo to the neighbors telling them of his meeting with Mr. Bello and DCRA's suggestion that the basement be turned into a cellar.

August 16, 1999. According to Forest Hills, it begins framing the house (Opp. Br. at 6). Mr. Clark speaks with Mr. Nunley this week before any walls go up and asks the status of DCRA's review of the project. Mr. Nunley states that the project is still under review. He does not tell Mr. Clark that no application for a revised permit has been filed by Forest Hills.

August 20, 1999. Appellants place Forest Hills on written notice that construction of 4512 is unlawful because it is more than three stories in height and because it is nonconforming at least with respect to the width of the side yard (Appellants' Exhibit 6). Mr. Cohen admits to having received in this letter at least by August 25, 1999 (Opp. Br. at 6). The letter concluded that "your continued unlawful construction is **at your own risk**." (Emphasis added).

August 25, 1999. Forest Hills files its new application for a building permit at 4512 to convert the basement to a cellar. Per Mr. Edgar Nunley, this application is not publicly available. Since its meeting with Mr. Bello on July 28, 1999, Forest Hills has poured the footings for the three-story and the one-story additions in the back, delivered concrete block, started and completed the foundation for the rear additions, and has begun to frame the house. (Opp. Br. at 5-6). All of this took place without a new permit application having been filed.

August 25, 1999. Appellants write to Mr. Nunley, pointing out that the house is being advertised as containing four floors and that construction is proceeding even without a new permit (Exhibit 7). DCRA refuses to issue a stop order even while the developer is building what DCRA would later admit was a completely illegal structure. DCRA claims that it is deciding whether or not any revised permit will be issued.

August 27, 1999. Mr. Nunley calls Mr. Clark and tells him that the project is still under review and that no decision has been reached. He promises to visit the site.

August 31, 1999. Mr. Sloame calls Mr. Bello who says that the builder has submitted revised plans providing for a "berm." Mr. Bello says that he is meeting that week with Mr. Nunley and Mr. Johnson to make the decision whether to approve the revised plans. Mr. Sloame objects to the "berm solution." Mr. Bello says that as long as there are only three exposed floors, "they could have as many cellar floors as they want." Mr. Sloame asks Mr. Bello whether a 10 story residence with seven cellars would violate the zoning regulations. Mr. Bello says no. Mr. Sloame tells Mr. Bello that if the revised plans are approved, Mr. Bello will have to explain his interpretation to a judge.

September 2, 1999. The Appellants again write Mr. Nunley and point out that construction is racing ahead, even though no new permits have issued. (Exhibit 8). The developer

is ready to add the fourth story to the house. The letter points out further that 4512 is already taller than any house on the block even without the fourth story. Appellants also point out that to construe the DC zoning regulations as allowing the elimination of the story by regrading to place a small berm in front of the house at the measuring point would completely undermine the integrity of the regulations.

September 2, 1999. The Appellants write to Mr. Michael Johnson asking for a meeting concerning the illegal four-story home. (Exhibit 9). They point out that they have not been able to get any answer to their question concerning the actual status of DCRA's approval process. They attach a copy of an advertisement for the house as a six bedroom home with four finished floors. One of those bedrooms is on the floor that is to become the cellar. Forest Hills and DCRA claim that the bottom floor is a cellar for purposes of height and a basement for purposes of occupancy.

September 6, 1999. Labor Day. Construction continues all day long. Clark writes the neighbors informing them of the status of 4512.

September 7, 1999. Councilmember Patterson's office receives a message late in the day that the Zoning Administrator has approved the construction of the four-story house at 4512 and is going to allow the issuance of new permits. DCRA never notifies the Appellants of this decision. DCRA promises

Councilmember Patterson a written explanation of its position the next day.

September 8, 1999. Appellants write to the Zoning Administrator to protest his decision. The Zoning Administrator leaves a voice mail message that the "purportedly" four story house will be approved even though it "looks very awkward." He promises a meeting which never takes place.

September 8, 1999. Murray Cohen meets with Armando Lourenco concerning 4512. He states that Mr. Lourenco's "input was needed, since neighbors had questioned the sideline requirements and finished grade elements." (4512 Exhibit 14). Mr. Cohen states further that Mr. Lourenco had visited the site the evening before (September 7, 1999). He concludes that "based upon" the events of September 7 and 8, Forest Hills was continuing with its construction. By this date the fourth floor was already framed.

September 8, 1999. Councilmember Patterson writes to Lloyd Jordan asking when a final decision will be reached because Mr. Lourenco has said that although height is not issue, he is still reviewing the plans and permits with respect to the side yard and to see if the actual structure matches the permits on file. Councilmember Patterson adds a handwritten note asking "and when will you return my calls?!" (Exhibit 11).

September 10, 1999. Appellants again write to Mr. Michael Johnson asking for some evidence of the decision from

the department so that an appeal could be filed with the BZA (Exhibit 12). Construction is continuing even though there were no permits posted on the site.

September 10, 1999. Armando Lourenco writes to Kathy Patterson to inform her of his decision. Mr. Lourenco admits as follows: "The structure, as it now stands and if nothing was done to remedy it, is technically a four-story building." (Exhibit 1). Mr. Lourenco states that "I empathize with the neighbors" but instead of enforcing the regulations, struggles to find a way to retroactively approve what was admittedly an illegally granted permit.

September 13, 1999. Councilmember Patterson again writes to Lloyd Jordan about 4512 (Exhibit 13). She asks why she did not receive Mr. Jordan's written opinion that Mr. Jordan had promised would be hand delivered to her by Friday morning September 10, 1999, but which instead was a letter from Mr. Lourenco faxed to her late on Friday September 10. She requests a copy of the survey to which Mr. Lourenco referred in his September 10 letter. Eventually that letter was made available to her (attached as Exhibit E-2 to the appeal).

September 14, 1999. Appellants write to Mr. Lloyd Jordan asking why DCRA has allowed construction to proceed at the site without a permit and why it is going out of its way to favor a builder who had admittedly misrepresented its project in its initial permit application (Exhibit 15).

September 17, 1999. New permit is issued for 4512, which is not publicly available until October.

September 17, 1999. DCRA approves the wall test report for 4512 (Exhibit 14).

September 20, 1999. Lloyd Jordan again writes to Councilmember Patterson (Exhibit 17), enclosing a copy of the wall test survey. He also notes that in his view the regulations allow property owners to regrade their lots in any fashion they choose without any permission. He makes no mention of 12 DCMR §105.2 which requires that the original grade be restored after the type of demolition which was done here. Finally he states that he would be opposed to requiring regulatory approval for regrading.

September 22 and 23, 1999. BZA faxes Mr. Sloame copies of appeal forms and regulations.

Approximately week of October 4, 1999. Appellants are finally able to get copies of the revised permit and permit application which were not previously publicly available.

October 11, 1999. After consultation with zoning counsel, neighbors decided to prepare and file a BZA appeal.

October 24, 1999. Mr. Sloame reviews and revises Clark's rough draft of BZA appeal form.

October 25, 1999. Draft BZA appeal is presented to zoning counsel.

November 3, 1999. Appellants file their appeal with the BZA.

November 15, 1999. ANC 3F holds its first meeting concerning 4512. Forest Hills promises to deliver plans for regrading both to neighbors and to ANC.

November 17, 1999. Neighbors request in writing the plans for regrading promised by Forest Hills in the ANC meeting of November 15, 1999.

November 28, 1999. Neighbors again request in writing the plans for regrading promised by Forest Hills in the ANC meeting of November 15, 1999.

December 3, 1999. Forest Hills finally delivers copies of the approved drawings for the permits of June 7 and September 17, 1999 for 4512. Plans for regrading are still not provided.

December 8, 1999. Neighbors again request in writing the plans for regrading promised by Forest Hills in the ANC meeting of November 15, 1999.

December 9, 1999. Another permit issues for 4512, this time for regrading the property and constructing new walkways from the house to the street. Sketch for the regrading

in front of 4512 is obtained (Exhibit 18). Neighbors learn of this permit only because they see it on the site in January.

December 27, 1999. Neighbors again request in writing the plans for regrading promised by Forest Hills in the ANC meeting of November 15, 1999.

January 4, 2000. Neighbors again request in writing the plans for regrading promised by Forest Hills in the ANC meeting of November 15, 1999.

January 6 or 7, 2000. Plans for regrading at 4512 are delivered. They show that the regrading has resulted in a 45 degree slope in front of 4512, which has already begun to fall of its own weight, and has erosion problems. (Exhibit 19). (See also Exhibits 20-22).

January 10, 2000. ANC 3F meets again and adopts a resolution in support of Appellants position.

February 2, 2000. First day of hearing.

Respectfully submitted,

George R. Clark, D.C. Bar #179747
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005
(202) 414-9215
(202) 414-9299 (fax)
Attorney for Appellants

February 22, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have on February 22, 2000 hand-delivered a true copy of the foregoing Timeline of Appellants to the parties listed below.

VIA HAND-DELIVERY
John Patrick Brown, Esquire
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W., Suite 900
Washington, D.C. 20036-5605

Mr. Michael Johnson
Zoning Administrator
DCRA/BLRA
Zoning Division
941 North Capital Street, N.E.
Suite 2200
Washington, D.C. 20002

George R. Clark